

NURSING BOARD[655]

Notice of Intended Action

Proposing rule making related to licensure and criminal convictions and providing an opportunity for public comment

The Board of Nursing hereby proposes to amend Chapter 3, “Licensure to Practice—Registered Nurse/Licensed Practical Nurse,” Chapter 4, “Discipline,” Chapter 11, “Examination of Public Records,” and Chapter 18, “Military Service and Veteran Reciprocity,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 272C.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 272C.

Purpose and Summary

The proposed amendments implement 2020 Iowa Acts, House File 2627, which made various amendments to Iowa Code chapter 272C. This rule making updates existing rules to conform with updated statutory language and implements new provisions by:

- Updating the Board’s rules regarding use of criminal histories when issuing licenses;
- Updating the Board’s rules regarding criminal convictions as grounds for discipline;
- Updating the Board’s rules to reference new Iowa Code section 272C.15 as authority to collect criminal records;
- Adopting rules to effectuate the new eligibility determination procedure created in new Iowa Code section 272C.15(5); and
- Removing the term “spouse” from Chapter 18 as a result of 2020 Iowa Acts, House File 2627, section 24, which struck Iowa Code section 272C.4(13).

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

There is a potential positive impact on jobs because individuals who may have been ineligible for licensure may be eligible for licensure as a result of this rule making.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 655—Chapter 15.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on March 16, 2021. Comments should be directed to:

Kathy Weinberg
Iowa Board of Nursing
400 S.W. Eighth Street, Suite B
Des Moines, Iowa 50309
Email: kathy.weinberg@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 16, 2021
9 to 10 a.m.

Board Office, Suite B
400 S.W. Eighth Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making. In an effort to ensure accuracy in memorializing a persons' comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs. Face masks and appropriate social distancing will be required.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **655—3.1(17A,147,152,272C)**, definition of "Fees," as follows:

"Fees" means those fees collected which are based upon the cost of sustaining the board's mission to protect the public health, safety and welfare. The nonrefundable fees set by the board are as follows:

1. to 13. No change.

14. No change.

15. Petition for eligibility determination, \$25.

ITEM 2. Amend subrule 3.4(1) as follows:

3.4(1) Board application. A graduate of an approved nursing program seeking initial licensure shall submit the following:

a. to c. No change.

d. ~~Copies of relevant court documents if~~ If the applicant has a criminal history, copies of all documents required by rule 655—3.11(272C).

e. No change.

ITEM 3. Amend subrule 3.5(1) as follows:

3.5(1) Board application. A graduate of an approved nursing program seeking licensure in Iowa who has been licensed in another state shall submit the following:

a. to c. No change.

d. ~~Copies of relevant court documents if~~ If the applicant has a criminal history, copies of all documents required by rule 655—3.11(272C).

e. to h. No change.

ITEM 4. Adopt the following new rule 655—3.11(272C):

655—3.11(272C) Use of criminal convictions in eligibility determinations and initial licensing decisions.

3.11(1) Definitions.

“Complete criminal record” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“Conviction” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“Disqualifying offense” means a conviction directly related to the duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession, or (2) the circumstances under which an offense was committed are circumstances customary to a licensed profession.

“License” means a license issued by the board.

3.11(2) License application. Unless an applicant for licensure petitions the board for an eligibility determination pursuant to subrule 3.11(3), the applicant’s convictions will be reviewed when the board receives a completed license application.

a. An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

b. An applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

c. An applicant must submit as part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the board.

d. The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

e. An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

f. Any application fees paid will not be refunded if the license is denied.

3.11(3) Eligibility determination.

a. An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual’s convictions are disqualifying offenses that would render the individual ineligible for licensure. An individual with a conviction is not required to petition the board for an eligibility determination prior to applying for licensure.

b. To petition the board for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner shall submit all of the following:

- (1) A completed eligibility determination form;
- (2) The complete criminal record for each of the petitioner’s convictions;
- (3) A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should deem the petitioner rehabilitated;
- (4) All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- (5) Payment of a nonrefundable fee of \$25.

3.11(4) Appeal. A petitioner deemed ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board’s written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board’s rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the board’s written decision will become a final order.

a. An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

b. The contested case hearing shall be closed to the public and the board's review of a proposed decision shall occur in closed session.

c. The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner or applicant's convictions include at least one disqualifying offense. Upon the satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

d. A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

3.11(5) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

ITEM 5. Rescind subrule 4.6(7) and adopt the following new subrule in lieu thereof:

4.6(7) Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including Alford and nolo contendere pleas, or a finding or verdict of guilt, even if the adjudication of guilt is deferred, withheld, or not entered. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction. An offense directly relates to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or the circumstances under which the offense was committed are circumstances customary to the profession.

ITEM 6. Amend subparagraph **11.3(2)“f”(1)** as follows:

(1) Records pertaining to licensure by examination may include:

1. to 5. No change.

6. Past felony record. This information is collected pursuant to Iowa Code section ~~147.3~~ 272C.15.

7. to 9. No change.

ITEM 7. Amend subparagraph **11.3(2)“f”(2)** as follows:

(2) Records pertaining to licensure by endorsement may include:

1. to 3. No change.

4. Past felony record. This information is collected pursuant to Iowa Code section ~~147.3~~ 272C.15.

5. to 8. No change.

ITEM 8. Amend subparagraph **11.3(2)“f”(3)** as follows:

(3) Licensure by renewal, reinstatement and reactivation.

1. No change.

2. Past felony record. This information is collected pursuant to Iowa Code section ~~147.3~~ 272C.15.

3. No change.

ITEM 9. Rescind the definition of “Spouse” in rule ~~655—18.1~~ **(272C)**.

ITEM 10. Amend rule ~~655—18.3~~ **(272C)** as follows:

~~655—18.3(272C) Veteran and active-duty military spouse reciprocity.~~

18.3(1) A veteran ~~or spouse~~ with a nursing license in another jurisdiction may apply for licensure in Iowa through reciprocity (endorsement) pursuant to ~~655—~~Chapter 3. A veteran ~~or spouse~~ must pass any examinations required for licensure to be eligible for licensure through reciprocity. A fully completed

application for licensure submitted by a veteran ~~or spouse~~ under this subrule shall be given priority and shall be expedited.

18.3(2) Such an application shall contain all of the information required of all applicants for licensure who hold licenses in other jurisdictions and who are applying for licensure by reciprocity, including but not limited to completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary histories, and, if applicable, a criminal history background check. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2) ~~or as a spouse as defined in rule 655—18.1(272C)~~.

18.3(3) to 18.3(5) No change.

18.3(6) A veteran ~~or spouse~~ who is aggrieved by the board's decision to deny an application for a reciprocal license or a provisional license or is aggrieved by the terms under which a provisional license will be granted may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision. No fees or costs shall be assessed against the applicant in connection with a contested case conducted pursuant to this subrule.